**HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE**

**WRIT PETITION No.14891 OF 1996**

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**Between:**

The Vetapalem Toddy Tappers Cooperative Society,
Vetapalem, Vetapalem Mandal, Prakasam District,
Rep. by its President G.Venkateswarlu

**……Petitioner**

**And**

Commissioner of Prohibition and Excise,
Andhra Pradesh, Hyderabad
and twenty one others

**……Respondents**

**:: ORDER ::**

Counsel for the Petitioner : Shri Krishna Murthy Devarakonda representing Shri V.Ajay Kumar

Counsel for Respondent Nos.1 to 5 : Government Pleader for Prohibition and Excise.

Counsel for Respondent Nos.6 to 22 : Shri K.Ashok Reddy

**Dated: 12-09-2006**

In this petition, the petitioner has prayed for quashing communication dated 4-7-1996 vide which Assistant Commissioner, Prohibition and Excise, Ongole (respondent No.2) conveyed that respondent Nos.6 to 22 have been admitted as members.

In the affidavit filed by Sri Gudivalli Venkateswarlu, President of the petitioner society, it has been averred that the society has twelve members, all of whom belong to tapping community and are earning livelihood in the tapping profession. The deponent has further averred that since its formation the society has taken the village toddy shop on lease and all the members are eking out their livelihood by tapping the excise trees allotted to each member. According to Sri Gudivalli Venkateswarlu, in the wake of prohibition imposed by the State Government on manufacture, sale and consumption of arrack and other country liquors, the demand for toddy has considerably increased and with a view to take advantage of this situation, a large number of persons who do not know anything about the profession of toddy tapping are trying to become members of the society. In paragraph 5 of his affidavit, Sri Gudivalli Venkateswarlu has averred that vide Circular Cr.No.22518/95/CPE/E2, dated 21-3-1996, Commissioner of Prohibition and Excise, Andhra Pradesh instructed all the Excise officials not to admit new persons as members of toddy tappers co-operative societies because that power vests in the Registrar of Co-operative Societies, but in complete disregard of those instructions, respondent No.2 directed the petitioner to admit respondent Nos.6 to 22 as members.

The petitioner has questioned the legality of communication dated 4-7-1996 by contending that respondent No.2 does not have the power to admit new members. Another plea taken by the petitioner is

that the power to admit members exclusively vests in the society and respondent No.2 cannot thrust respondent Nos.6 to 22 as its members.

In the counter affidavit filed by Sri Chebrolu Venugopal (respondent No.22), it has been averred that respondent Nos.6 to 22 had made applications to the society for their induction as members, but the same were not entertained. Therefore, they were compelled to approach respondent No.2 for being treated as members of the petitioner society. In paragraphs 7, 8 and 10 of his affidavit, Sri Chebrolu Venugopal has averred as under:

> "7. In reply to para 5 of the affidavit, it is submitted that the averments that the respondent Nos.1 to 5 are directing the various toddy members to admit new members as members of the society without taking the view of the society, etc. etc. are false. There is no such circular which prevents any person to become a member of the toddy tapper co-operative society and the Superintendent of Prohn. & Excise is the Registrar in respect of toddy tappers co-operative societies and he is empowered to discharge of the duties as a Registrar shall do so under the provisions of the A.P. Co-operative Societies Act, 1964. Hence, the allegation that the Excise officials are prevented to admit new persons as members of the toddy tapper co-operative society as the powers of the Registrar under Sections 19 and 20 of the A.P. Co-operative Societies Act, 1964 were not delegated to them, is incorrect.
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> 8. In reply to paras 6 to 8 of the affidavit, it is submitted that all of us made applications to the petitioner society, but the petitioner society refused to receive the same, as such we approached the competent authority requesting to get us admission to the petitioner society as we are working as tappers for several years under the petitioner society.
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> 10. In reply to para 10 of the affidavit, it is submitted that it is false to state that these respondents (6 to 22) are not at all belonging to tapping profession. We are working as tappers to the knowledge of the 5th respondent for several years under the petitioner society itself. It is also false to state that we are prosecuting different professions. In fact, we are working

under the petitioner society as tappers for the past several years. This fact will be known if the competent authority conducts a test or conduct an enquiry in the village. In fact, as stated supra, we are eking out our livelihood only as workers under the petitioner society and we are fully eligible to become members of the petitioner society. The petitioner society is running on the bogus members, but admitting us as members of the petitioner society is fully justified."

Shri Krishna Murthy Devarakonda, learned counsel for the petitioner relied on order dated 3-11-1995 passed by the learned Single Judge in Writ Petition No.4550 of 1995 – **Toddy Tappers Cooperative Society, Vaderevu, Cheerala Mandal, Prakasam District v. The Prohibition and Excise Superintendent, Ongole** and argued that the communication impugned in the writ petition should be nullified because respondent Nos.6 to 22 did not apply for membership through the Registrar of the Societies.

Shri K. Ashok Reddy, learned counsel for respondent Nos.6 to 22 invited my attention to the averments contained in the counter-affidavit filed by Chebrolu Venugopal (respondent No.22) to show that in the first instance they had applied to the society for being inducted as members and approached respondent No.2 only after the latter declined to entertain their applications. Shri Reddy submitted that the petitioner cannot take advantage of its own mistake of not entertaining the applications submitted by respondent Nos.6 to 22.

I have thoughtfully considered the respective submissions. Sub-sections 2A, 2B and 3 of Section 19 of the Andhra Pradesh Cooperative Societies Act, 1964, which have bearing on the decision of this petition, read as under:

"**19. Eligibility for membership:**

…

(2-A) Any person duly qualified for admission as a member under the provisions of this Act, the rules and the bye-laws, may apply through the Registrar for membership of such societies and in such forms as may be prescribed and such person shall be deemed to have been admitted as a member of the society from the date of receipt of the application in the office of the society.

(2-B) Notwithstanding anything in this Act, the Registrar may either suo motu at any time or on any application by the society or any aggrieved person made within fifteen days from the date mentioned in sub-section (2-A) and after giving an opportunity to the person concerned and recording the reasons therefor declare such person as not eligible for membership of the society within thirty days from the date of receipt of the application by the Registrar.

(3) The general body of a society shall not, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its bye-laws. Where admission is so refused, the decision, with reasons therefor, shall be communicated by the registered post to such person within fifteen days of the date of the decision, or within sixty days from the date of his application for membership, whichever is earlier."

A reading of the above reproduced provisions makes it clear that any person duly qualified for admission as member can apply through the Registrar for membership of a society and from the date of receipt of the application in the office of the society, such person automatically becomes member {Section 19 (2A)}. Under sub-section (2B), the Registrar can, suo motu or on an application made by the society or any aggrieved person, declare that a person is not eligible for membership of the society.

The averments contained in the counter-affidavit of respondent

No.22 shows that before approaching respondent No.2, respondent Nos.6 to 22 had submitted application to the society, but the latter refused to receive the same. This is evinced from the averments contained in paragraphs 7 and 8 of the counter-affidavit, which have remained uncontroverted due to non-filing of rejoinder affidavit. In this view of the matter, it is not possible to entertain the plea of the petitioners that respondent No.2 committed a jurisdictional error by sending the impugned communication.

No other point has been argued.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, interim order dated 26-7-1996 shall stand vacated and WPMP No.18227 of 1996 filed by the petitioner shall stand dismissed.

**G.S. SINGHVI, CJ**

**12-09-2006**

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